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In re Application of
KWON et al.
Application No. 10/020,344
Filed: December 11, 2001
Attorney Docket No. 612407-27

**OFFICE OF PETITIONS
DECISION
ON PETITION**

This is a decision on the petitions filed April 25, 2005, which is being treated as a request under (1) 37 CFR 1.137(a) or alternately under 37 CFR 1.137(b) for revival of the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 16, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 17, 2005.

Petition under 37 CFR 1.137(a) – Unavoidable delay

Petitioner states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable because the August 16, 2004 Office Action was mailed to the incorrect address and failed to reach the applicants in sufficient time to permit a timely reply, resulting in abandonment of the application. In support, petitioner refers to the change of correspondence address and revocation/power of attorney filed June 22, 2004 with the Office prior to the mailing of the Office Action on August 16, 2004.

The Revocation/Appointment of Power of Attorney and change of correspondence address filed on June 25, 2004 was not complete since all the statements required by 37 CFR 3.73(b) were not included. While the revocation/power of attorney was signed by a person having apparent authority to sign on behalf of the assignee (e.g., David Macdonald, President), 37 CFR 3.73(b)(1) also requires (i) documentary evidence of a chain of title from the original owners to the assignee (e.g., copy of an executed assignment) or (ii) a statement specifying where

documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reels and frame numbers). No statements or documentary evidence have been provided. As such, the Office Action was not mailed to an incorrect address.

Thus while due care was taken to adhere to the requirement for prompt notification of the change of address, delays resulting from the lack of knowledge or improper application of the patent statute, rules of practice of the MPEP, however, does not constitute "unavoidable" delay. See Haines v. Quigg, 673 F. Supp. at 317, 5 USPQ2d at 1132; Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). Since the Revocation/Appointment of Power of Attorney did not comply with the rules, i.e., 37 CFR 3.73, the petitioner has not provided a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

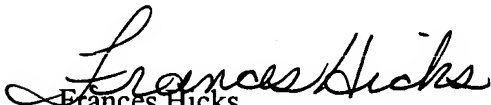
In view of the authorization contained in the petition to charge any additional fees, which may be required, the petition fee of \$250 to revive unavoidably abandoned applications will be charged to Deposit Account No. 50-0639.

Petition under 37 CFR 1.137(b) – Unintentional delay

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment Under 37 CFR 1.111; (2) the petition fee of \$750; and (3) the required statement of unintentional delay. Accordingly, the reply to the non-final action of August 16, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Group Art Unit 1754 for further processing.


Frances Hicks
Petitions Examiner
Office of Petitions